IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 18TH OCTOBER 2007 / 26TH ASWINA 1929

Crl.MC.No. 3167 of 2007()

C.C.NO.73/04 OF THE J.F.C.M, KATTAKKADA

PETITIONER: ACCUSED

T.P.RAGHU RAMAN,
CUCCOO, C.C.ROAD, M.O.WARD, ALAPPUZHA.

BY ADV. SRI.S.RAJEEV

RESPONDENTS: STATE

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 18/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3167 of 2007

Dated this the 18th day of October, 2007

O R D E R

The petitioner faces indictment in a prosecution under Section 138 of the Negotiable Instruments Act. Cognizance was taken as early as in 2004. The petitioner was once enlarged on bail. Later consequent to his non appearance before the learned Magistrate a warrant of arrest has been issued against the petitioner.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. His absence was not wilful or deliberate, but was due to his being involved in a road traffic accident with major injuries.

3. According to the learned counsel for the petitioner, the petitioner is unable to move about and in these circumstances, the petitioner cannot appear before the learned Magistrate.. The petitioner is willing to appear before the learned Magistrate through counsel to ensure expeditious disposal of the case. The petitioner may be permitted to appear through counsel.

4. It is for the petitioner to appear before the learned Magistrate and make an application for exemption from personal

appearance under Section 205 Cr.P.C. Personal presence of the petitioner need not be insisted to consider such application for exemption. Such application must be considered by the learned Magistrate on merits and in accordance with law. The pendency of the non bailable warrant against the petitioner or his non appearance on the date of filing such application cannot be reckoned as sufficient reason for not considering such application on merits.

5. This Crl.M.C is dismissed with the above observations. In the peculiar facts and circumstances of the case, there shall be a direction that the warrant of arrest issued against the petitioner shall not be executed till 05.11.07, before which date, the petitioner must appear through counsel and make necessary application u/s 205 Cr.P.C.

(R.BASANT, JUDGE)

rtr/-